Article 21 of the Constitution. The Article has been interpreted to mean right to environment and hence water. In doing so the Court has partly ressurected the natural claim-right, meaning of 'rights', which was to be found in the customary laws and in the Easement Act earlier. This interpretation of water right, as we must note, is contrary to what it may mean in the statutory provisions now. Right to life is a fundamental (natural) right. What the courts are in fact doing in the public interest litigation cases is to locate the duty bound agencies who will satisfy (or not violate) the fundamental rights of the people. Whether judicial activism should mean expanding constitutional law or rectifying the existing statutory law, is controversial point. In a my opinion the latter resource can give more lasting solutions.[43] However, in so far as the courts have expanded the meaning of Article 21 and 14 and partly ressurected the common and customary law view of water rights, there is a whole new range of possibilities wherein the liberal ideology of natural rights of individuals as well as groups can be pushed further through litigations and new meanings can be give to this inchoate right.

This briefly summariszes the water rights situation from the side of the people. Let us turn to view now how this right has been viewed from the side of the state.

III.0.0. Rights of the State:

III.1.0. Constitutional Powers

The sovereign powers of the state over natural water resources begin with the Constitution. Entry 17, in the IInd List of the Seventh Schedule places water at the disposal of the states. This includes water supplies, irrigation and canals, drainage and embankments, water storage and hydro-electric power. This power is limited only by entry 56 of List I which gives powers to the centre for regulation and development of inter-state rivers and river-valleys, to the extent to which such "regulation and development under the control of the Union is declared by the Parliament by law to be expedient in the public interes. Vide entry 57 of the same list the union also has the sole power to regulate fishing and fisheries beyond territorial waters.

In actual practise the centre-state relationship is far more complex than what the constitutional arrangement may make it seem. This is because although the water resources are at the disposal of the states, it is the centre which allocates the revenues for development purposes. The states have to be dependent on the centre not only for the national funds but also for receiving international funds. A great number of dam and irrigation projects in India are carried out with international funds, such as from the World Bank, or on bi-lateral terms with funds from other countries, such as United States, Sweden, Canada, etc.

Also, after the coming of the Forest Conservation Act, 1980 and the new forest and water policies, the states have to get a clearance from the centre for the execution of any project which damages the environment.

III.2.0. Statutory Rights

III.2.1. Direct Rights on Water

In the context of the government's rights the customary law is not of much significance since almost all rights over water have been acquired through enactments by the government. It is important to note that although the constitututonal provisions provide state's power's over water resources, the legislations, specially those concerning irrigation, translate this power directly in terms of rights. The irrigation Acts vest the rights over natural water resources in the government. The power of the state over water, however, is not a mere constitutional matter. It begins with the very first codification pertaining to water rights directly, namely the Easement Act, 1882. Section 2 of the Act recognizes the absolute right of the state and claims that no prescriptive rights of easement can be claimed against the government. The Preamble to the Act does not explain why it became necessary to vest this absolute right in the government. In the Easement Act, as we have noted, this overall absolute right is somewhat curtailed by the recognition of customary rights of the

people. The subsequent irrigation laws, however, progressively affirm the states rights and relegate the customary rights to arenas of lesser and lesser significance. The M.P.Irrigation Act of 1931, for example, explicitly asserts (in Section 26): "All rights in water of any river, natural stream, drainage, channel, lake or other natural collection of water, shall vest in the government...." The subsequent sections 26-29, bar various accrual of rights in water arising from the Easement Act. Such proclamation of absolute rights, as we have noted in the earlier section, have not gone unchallanged.

Let us briefly note the manner in which the administration controls the use of water and exercises its rights under various irrigation laws. The irrigation and water supply Acts of various states provide for notification by the Canal Officer for the utilization of any natural water stream in ways other than already prevalent. Public notices are issued under these irrigation Acts for claiming compensation, which may be awarded for any of the following reasons: stoppage or diminution of water supply in: irrigation, water works, navigation channels, or for loss of land or revenue. After notification the Canal Officer has the right to remove any obstruction, close channels and do other things necessary for the new scheme. The irrigation and water supply Acts also entitle persons to seek supply of water for irrigation or domestic purposes on application to the Canal Officer and on payment of taxes.

Since the people's entitlement under the irrigation and water supply Acts is not absolute or fundamental, the Canal Officer has the right to refuse allocation of water if there are good reasons for doing so.

On the side of the larger planning and management, the Water Boards are vested with the power to draw up schemes for irrigation canals and get them executed. Where hydro-electric schemes are concerned the State Electricity Boards are also involved. National level plans, however, are carried out by the Central Water Commission, the Central Ground Water Board and the Planning Commission.

III.2.2. Implied Rights

Besides numerous state enactments which directly concern the use of water for its own sake, such as for irrigation or drinking purposes, there are other laws which involve the use of water or benefits arising from it, such as production of electricity, or water ways fisheries, food, recreation, etc. The enactments concerning such matters involve the use of water too. By implication, therefore, they give the government rights over such use of water. Amongst such enactments one may note the following:

The Obstructing in Fairways Act, 1881.

The Indian Ports Act, 1908.

The Indian Steam Vessels Act, 1917.

The Indian Forest Act, 1927 (Section 26, 32 (F)).

The Indian Mines Act, 1952 (Ch.V. Section 19 (1)).

The Rajasthan Soil and Water Conservation Act, 1964.

The Indian Electricity Act, 1910.

Law of these types which are not directly about water (and there are a number of them at the state level) usually have sections which concern harnessing of water or its use for other purposes such as floating timber, extracting minerals, recreation, etc. These laws presuppose that the government has a prior right to use water in these and other ways. Often such matters are dealt with the rules under the laws or through delegated powers.

IV.0.0. The Jurisprudence of Water Rights and Legal Policy

IV.1.0. The Problematic

Let us begin by smummarising the basic jurisprudential tensions that we have seen in the development of water rights over this century in India.

The first basic question is: should we characterize water right as a negative natural claim right or as a positive entitlement right. We have seen that the customary law earlier, the common law tradition as well as the Easement Act had characterized it as a negative natural right. Recently the Supreme Court in its public interest litigation has once again made it out into a natural negative right. The statutory provisions, on the other hand have tended to describe this right as a positive entitlement right.

We must reflect on what theory of state is involved in either of these characterization. To characterize it as